

Appl. No. 10/751,362
Atty. Docket No. AA611
Amdt. dated January 23, 2006
Reply to Office Action of Oct. 31, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 11 are pending in the present application. Claims 3 and 5-9 have been withdrawn from consideration. Claim 4 is subject to an election of species requirement. Claims 1 and 4 are rejected under 35 U.S.C. § 112, second paragraph as indefinite. Claims 1, 2, 4, 10 and 11 are rejected under 35 U.S.C. § 102(e). Claim 4 is rejected under 35 U.S.C. § 103.

Claims 1 and 4 have been amended. These amendments do not involve any introduction of new matter.

Response to Election of Species Requirement

The Examiner has required, under 35 USC §121, election of a single disclosed patentably distinct species from the Markush group of Claim 4. Applicants hereby elect species 1: an order illustrating a story for initial examination on the merits.

The previous restriction requirement has been made Final per the Office Action. Applicants have not petitioned this holding because the requirement itself is not opposed and there does not appear to be any adverse action taken by the Examiner to petition from. However, applicants expressly re-iterate their position that contrary to the assertion in the Office Action, Claim 1 is generic to the species of List 1 and List 2. The Office Action maintains that this is not persuasive because the search required is different for each species. While it not doubted that Claims 2 and 3 each require a separate search, this does not change the fact that Claim 1 is certainly generic to both species. Claims 2 and 3 each depend from Claim 1. Claim 2 requires a pre-determined order. Claim 3 requires a randomly selected order. Claim 1 is generic to both in that it is directed to a "pre-determined association" which can be a pre-determined order or a randomly selected order. Therefore, if Claim 1 is allowable, both claims 2 and 3 are allowable by definition as being narrower than Claim 1. This is the very definition of a generic claim.

As noted above, Applicants have not petitioned because there does not appear to be an adverse action on the part of the Examiner to petition from. This is because the Office Action does in fact examine Claim 1 and the elected species of Claim 2. However, Applicants' understanding is that because Claims 3 and 5-9 all depend from Claim 1 (and

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claim 1 is, therefore, generic to these claims), when Claim 1 is found allowable over the art, these claims will be allowed as well.

Rejection Under 35 USC §112, Second Paragraph

Claim 1 has been rejected under 35 U.S.C. § 112, second paragraph as indefinite. The Office Action notes that the claim limitation "the n graphics" in line 8 lacks antecedent basis. Claim 1 has been amended to clarify the relationship between the n absorbent articles and the graphics on each. This amendment does not change the scope or meaning of the claim, but is intended for clarification purposes only. In light of this clarification, the rejection has been overcome and may be withdrawn.

Claim 4 has been rejected under 35 U.S.C. § 112, second paragraph as indefinite. Claim 4 has been amended to make clear that each of the entries in the Markush group and combinations thereof are within the alternative embodiments of the claim. As such, this rejection has been overcome, and may be withdrawn.

Rejection Under 35 USC §102 Over Pargass et al.

Claims 1, 2, 4, 10, and 11 have been rejected under 35 U.S.C. § 102(e) as anticipated by Pargass et al. (US 6,558,499). Contrary to the position set forth in the Office Action, however, the Pargass et al. patent does not anticipate amended Claim 1.

Anticipation, of course, requires that the prior art reference disclose each and every limitation of the rejected claim. In the instant case, the Pargass et al. patent does not disclose all features of amended Claim 1. For example, at a minimum, the claim limitation that:

the printed graphic of each of the n absorbent articles is
different from the graphic of each of the remaining
absorbent articles and wherein all of the printed graphics of
the n absorbent articles have a predetermined association

is not met by the Pargass et al. patent. Simply, put this claim limitations requires that the package of absorbent articles has more than 10 absorbent articles each having a unique graphic – i.e. one that differs from each of the others in the group of more than 10. By contrast, the Pargass et al. patent does not disclose this relationship.

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The Office Action cites to Column 15, lines 44-52 of the Pargass et al. patent as supposedly providing this disclosure. However, a closer reading of this cited section of the patent reveals that such is not the case. Column 15, lines 44-52 of the Pargass et al. patent does disclose a "variety pack" generally, but only discloses that at least one graphic differs from at least one other graphic. Additionally, the Pargass et al. patent discloses that the graphics themselves are on a master roll which prints them (such as onto the backsheet). As an example, four different repeating graphics are disclosed. While the Pargass et al. patent does disclose on Col. 15-16 (lines 66- line 2) that the set can include "any desired number of absorbent articles" there is, in fact, no disclosure of a set of unique graphics approaching anywhere near more than 10 in number.

This difference is significant. As the instant application discloses, it was the application of ink jet printing technology to the process (as compared to the roll printing of Pargass et al) which makes large number of unique graphics possible. A process such as Pargass et al. using a master roll could not accommodate a substantial number of unique graphics. This limits the ability to "tell a story" or provide a sequence of graphics which accomplish the other objectives noted in the application. Given these deficiencies of the Pargass et al. patent, it is clear that Claim 1 is both novel and non-obvious with respect to its teachings for at least these reasons given above. Similarly, Claims 2, 4, 10, and 11 all depend from Claim 1 and are patentable over the Pargass et al. patent for at least the same reasons. Therefore, it is respectfully requested that the rejections under § 102(e) over Pargass et al. be withdrawn.

Rejection Under 35 USC §103(a) Over Pargass et al. in view of Stavrulov.

Claim 4 has been rejected under 35 U.S.C. § 103 over Pargass et al. in view of Stavrulov (WO 00/13632). However, the basic application of the Pargass et al. patent has not changed from that discussed above with respect to Claim 1. The addition of the Stavrulov application does not cure the defects noted above with respect to Claim 1, even assuming such combination is proper in the first instance. There is still no suggestion to arrive at a package of articles having the claimed number of unique images required by the claims. Indeed the instant application describes the advances which make such structures possible, and the cited combination of references does not suggest such a result. As such, the rejection of Claim 4 under 35 U.S.C. § 103 should be withdrawn.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §§ 112, 102, and 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-11 is respectfully requested.

Respectfully submitted,

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